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**Dr Chandra Muzaffar v
Universiti Malaya**

HIGH COURT (KUALA LUMPUR) — ORIGINATING MOTION NO R2-25-
36 OF 1999

KC VOHRAH J

B

9 FEBRUARY 2002

Administrative Law — Rules of natural justice — Failure of university to renew employment contract of professor — Representation that applicant would be employed on year to year basis and subsequently made permanent staff — Whether failure to renew contract amounted to dismissal — Whether applicant was public servant and must be given right of hearing — Whether applicant had legitimate expectation of continuing employment — Balance of public and private interest

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The applicant's service as a professor in the University of Malaya ('UM') came to an end when UM decided not to renew his contract of employment when it expired on 28 February 1999. The applicant in this certiorari application complains that he had been dismissed from employment and had not been accorded a hearing before he was dismissed. Alternatively, he says that UM did not give him the benefit of continued employment which was founded on the representations of UM to him, and which induced him to leave University Science Malaysia ('USM') where he was a permanent staff, that the applicant would be made a permanent staff of UM although he was to be employed on a year to year basis because of administrative requirements; that he had a legitimate expectation to continue to be employed as a professor at UM until he retires and that there was also a legitimate expectation to be heard before UM made its decision not to renew his contract, and these legitimate expectations had been breached.

Held:

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(1) The applicant was in the service of UM, a statutory entity, separate from the public services (which included the education service) whose members were under the jurisdiction of the Education Service Commission constituted under art 141A of the Federal Constitution ('the FC'). He was thus not a holder of a public office, ie the education service, within the meaning of art 132(1)(h) of the FC, and he was therefore not entitled to constitutional protection under art 135(2) of the FC which provided that no member of such a service shall be dismissed or reduced in rank without being given a reasonable opportunity of being heard (see p 376F-I).

(2) This was not a case of dismissal from service. The applicant's status was that of an employee whose contract of service had come to an end and which was not renewed. On the other hand, there was the principle that while a public body, which had lawfully entered into a contract was bound by it and had the same power

under it as any other contracting party, however, in exercising the contractual power, it might also be restricted by its public law responsibilities. Thus, a decision taken by a public body could not be treated as purely in the realm of contract, it might, at the same time, be a decision governed by statute; *Webster v Auckland Harbour Board* (1983) 142 CR 646. This principle would have to be viewed in the context with what the applicant claimed was a legitimate expectation to be heard before UM made its decision not to renew his contract and a legitimate expectation to continue (see p 378F–H).

- (3) The applicant had a legitimate expectation of continuing to be employed as a contract professor by the vice chancellor on behalf of the UM from year to year until he was confirmed as a permanent staff member. The vice chancellor, on behalf of the UM, had a discretionary power on such appointments (and for the renewal of contracts for one year at a time). After the representations had been made to him, then the applicant had a right to expect that UM would act in accordance with that representations of at least renewing his contract on a year to year basis until he became confirmed as a permanent staff member. While there was a concomitant legitimate expectation to be heard as to why the contract could not be renewed on a year to year basis, until he was so confirmed, the benefit of being confirmed for another year by the vice chancellor who had such power should be given unless there was an overreaching public interest against frustrating the legitimate expectation of the applicant (see p 387F–H).
- (4) The court had to see that there was a proper balance between the public interest and private interest in the light of the representations made to the applicant on which he acted to his grave detriment, and the public interest arising from a directive from the Ministry of Education directing UM to optimize its internal resources and also the financial constraints on the resources of UM. In regard to the public interest aspect, the reliance by the university on economic factors which it gave was vague and unhelpful and the reference to the government directive which in reality gave its discretion on the non-renewal of contract officers (and the university in fact renewed the term of some lecturers) did not show that there was an overriding public interest for UM to renege on its representations to the applicant and to him alone that the vice chancellor would continue to employ him on a year to year basis until he was placed on the permanent staff by the relevant university authority (see p 388F–H).
- (5) The applicant expected to be a member of the permanent staff, but that expectation could not be fulfilled because the power to emplace him on a permanent basis has not been exercised by the relevant authority. That legitimate expectation could not be fulfilled and could not be enforced. So it could not form the basis

- A for a monetary claim till the date he retires. It was a year to year contract which was renewable by the UM through the vice chancellor, and in fact his term had been renewed earlier by the vice chancellor, and what subsequently took place was that he had been denied the legitimate expectation of being continued in service for another year as was explained earlier. It would be fair and just to compensate him for that one year which he had expected and what was not given to him (see p 390E–F).
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[Bahasa Malaysia summary]

- C Perkhidmatan pemohon sebagai seorang profesor di Universiti Malaya ('UM') tamat apabila UM membuat keputusan tidak membaharui kontrak pekerjaan beliau ketika ia luput pada 28 Februari 1999. Pemohon dalam permohonan certiorari ini mengadu bahawa beliau telah dipecat daripada pekerjaan dan telah tidak diberi suatu pembicaraan sebelum beliau dipecat. Secara alternatifnya, beliau berkata bahawa UM tidak memberikan beliau manfaat pekerjaan diteruskan yang diasaskan pada representasi-representasi UM kepada beliau, dan yang mana mendorong beliau meninggalkan Universiti Sains Malaysia ('USM') di mana beliau adalah kakitangan tetap, bahawa pemohon akan dijadikan kakitangan tetap UM meskipun beliau akan diambil bekerja atas dasar tahun ke tahun kerana syarat-syarat pentadbiran, bahawa beliau mempunyai jangkaan sah untuk terus bekerja sebagai seorang profesor di UM sehingga beliau bersara dan bahawa terdapat juga jangkaan sah untuk didengar sebelum UM membuat keputusannya untuk tidak memperbaharui kontrak beliau, dan jangkaan sah ini telah dimungkiri.
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Diputuskan:

- (1) Pemohon berkhidmat dengan UM, sebuah entiti berkanun, berasingan daripada perkhidmatan-perkhidmatan awam (yang mana termasuk perkhidmatan pendidikan) yang mana ahli-ahlinya adalah di bawah bidang kuasa Suruhanjaya Perkhidmatan Pendidikan yang dibentuk di bawah perkara 141A Perlembagaan Persekutuan ('Perlembagaan'). Beliau dengan itu bukannya pemegang jawatan awam, iaitu perkhidmatan pendidikan di dalam lingkungan maksud perkara 132(1)(h) Perlembagaan yang memperuntukkan bahawa ahli daripada perkhidmatan sedemikian tidak boleh dipecat atau diturunkan pangkat tanpa diberi peluang yang berpatutan untuk pembicaraan (lihat ms 376F–I).
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- (2) Ini bukannya merupakan kes pemecatan. Kedudukan pemohon adalah sebagai seorang pekerja yang mana kontrak perkhidmatannya telah tamat dan tidak dibaharui. Sebaliknya, terdapat prinsip bahawa sementara sebuah pertubuhan awam, yang telah secara sah di sisi undang-undang memasuki sesuatu
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kontrak adalah terikat olehnya dan mempunyai kuasa yang sama di bawahnya seperti mana pihak berkontrak yang lain, namun begitu, dalam melaksanakan kuasa kontraktual itu, ia mungkin juga terhad oleh tanggungjawab undang-undang awamnya. Oleh itu, sesuatu keputusan yang dibuat oleh sebuah pertubuhan awam tidak boleh dianggap sebagai semata-mata dalam lingkungan kontrak tersebut, ia mungkin, pada masa yang sama, merupakan satu keputusan yang dikuasai oleh statut: *Webster v Auckland Harbour Board* (1983) 142 CR 646. Prinsip ini haruslah dikaji menurut konteks apa yang dituntut oleh pemohon sebagai suatu jangkaan sah untuk didengar sebelum UM membuat keputusannya untuk tidak memperbaharui kontrak beliau dan satu jangkaan sah untuk terus berkhidmat (lihat ms 378F–H).

- (3) Pemohon mempunyai jangkaan sah untuk terus diambil bekerja sebagai profesor kontrak oleh timbalan cancellor bagi pihak UM dari tahun ke tahun sehingga beliau disahkan sebagai seorang ahli kakitangan yang disahkan. Timbalan cancellor, bagi pihak UM, mempunyai kuasa budi bicara atas perlantikan-perlantikan yang sedemikian (dan bagi pembaharuan kontrak untuk satu tahun setiap kali). Selepas representasi-representasi dibuat kepada beliau, maka pemohon mempunyai hak untuk menjangkakan bahawa UM akan bertindak menurut representasi-representasi itu untuk sekurang-kurangnya memperbaharui kontrak beliau atas dasar tahun ke tahun sehingga beliau disahkan sebagai seorang ahli kakitangan yang tetap. Sementara adanya jangkaan sah untuk didengar berhubung dengan mengapa kontrak tersebut tidak boleh diperbaharui atas dasar dari tahun ke tahun, sehingga beliau disahkan sedemikian, manfaat disahkan selama satu tahun lagi oleh timbalan cancellor yang mempunyai kuasa sedemikian haruslah diberikan melainkan terdapatnya kepentingan awam melampau yang mengecewakan jangkaan sah pemohon tersebut (lihat ms 387F–H).

- (4) Mahkamah haruslah memastikan bahawa terdapatnya imbalan yang sempurna antara kepentingan awam dan kepentingan persendirian memandangkan representasi-representasi yang dibuat kepada pemohon di atas yang mana beliau telah bertindak dengan amat merugikannya, dan kepentingan awam yang berbangkit daripada arahan yang diterima daripada Kementerian Pendidikan yang mengarahkan UM untuk mengoptimumkan sumber-sumber dalamannya dan juga desakan kewangan ke atas sumber-sumber UM. Berhubung aspek kepentingan awam, penggantungan universiti kepada faktor-faktor ekonomi yang diberikan olehnya adalah tidak jelas dan tidak membantu dan rujukan kepada arahan kerajaan yang pada hakikatnya memberikan budi bicaranya atas ketidak-pembaharuan kontrak pegawai-pegawai (dan universiti tersebut pada hakikatnya memperbaharui tempoh sebilangan pensyarah-pensyarah) tidak menunjukkan bahawa adanya kepentingan awam yang mengatasi

- A** untuk UM memungkirinya representasi-representasinya kepada pemohon tersebut dan kepada beliau sahaja di mana timbalan cancellor akan terus menggajikan beliau atas dasar tahun ke tahun sehingga beliau dimasukkan sebagai kakitangan tetap oleh pihak berkuasa universiti yang berkenaan (lihat ms 388F–H).
- B** (5) Pemohon telah menjangkakan untuk menjadi seorang ahli kakitangan tetap, tetapi jangkaan itu tidak dapat dicapai kerana kuasa untuk meletakkan beliau atas dasar tetap telah tidak dilaksanakan oleh pihak berkuasa yang relevan. Jangkaan sah tersebut tidak boleh disempurnakan dan tidak boleh dikuatkuasakan. Oleh itu ia tidak boleh membentuk asas untuk
- C** satu tuntutan wang sehingga tarikh beliau bersara. Ia adalah kontrak dari tahun ke tahun yang mana boleh diperbaharui oleh UM melalui timbalan cancellornya, dan malahan tempoh perkhidmatan beliau telah diperbaharui pada awalnya oleh timbalan cancellor, dan apa yang berlaku kemudiannya adalah bahawa beliau telah dinafikan jangkaan sah untuk terus
- D** berkhidmat selama satu tahun lagi seperti mana yang telah diterangkan pada awalnya. Adalah adil dan saksama untuk memberi pampasan kepada beliau untuk tempoh satu tahun yang beliau jangkakan dan apa yang telah tidak diberikan kepada beliau (lihat ms 390E–F).]

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Notes

For cases on rules of natural justice, see 1 *Mallal's Digest* (4th Ed, 1998 Reissue) paras 557–622.

F

Cases referred to

Associated Provincial Houses Ltd v Wednesbury Corporation [1948] 1 KB 223 (refd)

Attorney General of Hong Kong v Ng Yuen Shiu [1983] 2 AC 629 (refd)

Council of Civil Service Unions v Minister for Civil Service [1985] AC 374 (refd)

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Eng Mee Yong & Ors v V Letchumanan [1979] 2 MLJ 212 (refd)

Fadzil bin Mohamed Noor v Universiti Teknologi Malaysia [1981] 2 MLJ 196 (refd)

Findlay, Re [1985] AC 318 (refd)

H

JP Berthelsen v Director General of Immigration, Malaysia & Ors [1987] 1 MLJ 134 (refd)

Lori Malaysia v Arab Malaysia Finance Bhd [1999] 3 AMR 3161 (refd)

Majlis Perbandaran Pulau Pinang v Syarikat Bekerjasama-sama Serbaguna Sungai Gelugor dengan Tanggungan [1999] 3 MLJ 1 (refd)

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Malloch v Aberdeen Corporation [1971] 2 All ER 1278 (refd)

McInnes v Onslow-Fane & Anor [1978] 1 WLR 1520 (refd)

O'Reilly & Ors v Mackman & Ors [1983] 2 AC 237 (refd)

- R v Ministry of Agriculture, Fisheries and Food; ex p Hamble (Offshore Fisheries Ltd* [1995] 2 All ER 714 (refd) A
- R v North and East Devon HA; ex p Coughlan* [2000] 2 WLR 622 (refd)
- R v Secretary of State for the Home Department; ex p Hargreaves* [1997] 1 WLR 906 (refd)
- Reg v Secretary of State for Transport; ex p Richmond upon Thames London Borough Council* [1994] 1 WLR 74 (refd) B
- R Rama Chandran v the Industrial Court of Malaysia & Anor* [1997] 1 MLJ 145 (refd)
- Schmidt & Anor v Secretary of State for Home Affairs* [1969] 2 Ch 149 (refd)
- Tan Tek Seng v Suruhanjaya Perkhidmatan Pendidikan & Anor* [1996] 1 MLJ 261 (refd) C
- Tay Bok Choon v Tahansan Sdn Bhd* [1987] 1 MLJ 433 (refd)
- Webster v Auckland Harbour Board* (1983) 142 CR 646 (refd)

Legislation referred to

- Court of the Judicature Act 1964 s 25, Sch para 1
- Constitution of the University of Malaya ss 2, 6(1), 15(1), 23, 48(1)(d), (2), (4)
- Federal Constitution arts 132(1)(h), 135(2), 141A
- Rules of the High Court 1980 O 53 r 1(3)
- Rules of the High Court (Amendment) 2000 O 53 r 2(3) E
- Universities and University Colleges Act 1971 ss 2, 7
- University of Malaya Act 1961

Tommy Thomas (Ambiga Sreenevasan with him) (Skrine) for the applicant.

Wong Kian Kheong (BH Yap with him) (Lee Hishammuddin) for the respondent. F

KC Vohrah J:

Brief facts

The applicant's service as a professor in the University of Malaya ('UM') came to an end when UM decided not to renew his contract of employment when it expired on 28 February 1999. G

The applicant in this certiorari application complains that he had been dismissed from employment and had not been accorded a hearing before he was dismissed. H

Alternatively, he says that UM did not give him the benefit of continued employment which was founded on the representations of UM to him, and which induced him to leave University Science Malaysia ('USM') where he was a permanent staff, that the applicant would be made a permanent staff of UM although he was to be employed on a year to year basis because of administrative requirements; that he had a legitimate expectation to continue to be employed as a professor at UM until he retires and that there was also a legitimate expectation to be heard before UM I

A made its decision not to renew his contract, and these legitimate expectations had been breached.

B In regard to the first complaint that he was dismissed, he says that he had a constitutional right to livelihood by being a member of one of the public services, the education service, and that he was entitled to procedural fairness in that he should have been given an opportunity to be heard before he was dismissed; and if he was not a member of the public services, he was an employee of a public authority and was also entitled to procedural fairness before he was dismissed.

C In regard to the legitimate expectation issue, he states that in 1996 he was persuaded by the Deputy Chancellor (Academic Affairs) of UM, Professor Dr Osman Abu Bakar, during several meetings, to leave USM where he was a permanent staff, to join UM as the Director of the Centre for Civilization Dialogue as a contract professor which UM proposed to establish, and it was represented to him by Professor Osman, inter alia, that his status as a contract professor was an administrative requirement and that it would be a formality before he became confirmed as a permanent member of the university's academic staff. UM, in fact, had renewed his contract of employment for another year and had given him staff quarters. The decision of the university, therefore, not to further renew his contract of employment, was inconsistent with the representations made by Professor Osman to him; he has a legitimate expectation to continue to be employed by UM in view of the express representations made to him by Professor Osman, and he had a legitimate expectation to be heard or consulted by UM before the decision not to renew his employment was made.

The leave application

F The applicant applied ex parte to the High Court for leave to apply for an order of certiorari to quash the decision of UM not to renew his contract of employment.

G My learned brother, Azmel J, who heard the leave application, invited the views of UM, the respondent, and the Attorney General (who was given notice under the then O 53 r 1(3) of the Rules of the High Court 1980) on the leave application. UM, according to the written submission in the court file, objected to leave being given on the ground that there cannot be judicial review of the decision of UM not to renew the applicant's contract of employment as it was a decision made under a contract and was a purely private law matter. The view of the Attorney General (also seen from the written submission) was that there is an arguable case for judicial review in that the contract may not be an exclusively private law contract but one which incorporates elements of public law and that on the basis, inter alia, of *Webster v Auckland Harbour Board* (1983) 142 CR 646, it may well be arguable that the applicant had a legitimate expectation of a hearing by UM before the university decided not to renew his contract of employment.

H I My learned brother Azmel J granted the applicant leave to apply for an order of certiorari to remove to the High Court for the purpose of being quashed the decision of UM, and also granted him leave to apply for an

order of mandamus directing UM to make a decision to reinstate the applicant as Director and Professor of the Centre of Civilizational Dialogue without any loss of benefit. The court also gave an order that the applicant be at liberty to seek 'the appropriate order/relief from the court pursuant to para 1 of the Sch to the Court of the Judicature Act 1964 ('the CJA') and s 25 thereof.

The Appellate and Special Powers Division of the High Court was reorganized when Azmel J was transferred to another division and the number of judges in the division was reduced to two. The matter was allocated to my court for hearing and joined the queue of cases already scheduled for hearing. In support of the alternative prayer for an appropriate order or relief, an affidavit was filed in my court to show how much the applicant had lost by way of monetary benefits every month up to his retirement age of 55. I allowed the use of the affidavit over the objection of UM and ruled that UM could file an affidavit in reply to that affidavit in view of the fact that Azmel J had given the applicant liberty to seek an appropriate order or relief from the court as earlier stated.

Whether applicant member of education service under Federal Constitution

While the university readily agrees that the applicant, having been employed by a statutory body, ie UM, was afforded as an employee a special status under the statutory regime, the university says that the fixed term contract was not caught by the special status as the contract was an ordinary contract of employment and it was a simple case of his term of employment having come to an end, and in any event he had not asked for its renewal. The university disputes that the applicant was a member of the education service under the Federal Constitution ('the FC').

One of the contentions of the applicant was that he had been dismissed from service; that he was a holder of a public office, ie the education service, within the meaning of art 132(1)(h) of the FC, and that he is therefore entitled to constitutional protection under art 135(2) of the FC which provides that no member of such a service shall be dismissed or reduced in rank without being given a reasonable opportunity of being heard. The argument is without merit. Firstly, it has to be noted from the facts that he was not dismissed from service. Secondly, the applicant was employed by UM which is a public authority created and incorporated by statute, the University of Malaya Act 1961 ('the 1961 Act'). The Universities and University Colleges Act 1971 ('the 1971 Act'), through s 25(1) of the CJA provides that UM established under the 1961 Act 'shall be deemed to be a university established' under the 1971 Act under s 25(2) of the CJA, and the provisions of the 1961 Act 'shall subject to the provisions of this Act, continue in force for the purposes of the university'. In other words, the applicant was in the service of UM, a statutory entity, separate from the public services (which includes the education service) whose members are under the jurisdiction of the Education Service Commission constituted under art 141A of the FC.

- A** *Contract of employment entered into by public body restricted by public law responsibilities*

I shall next deal with the issue of whether it was a simple contract of employment between the university and the applicant which the university contends it is.

- B** Under s 7 of the 1971 Act, UM may exercise all the powers conferred on it by the Act or its Constitution. Under s 2 of the 1971 Act, 'the Constitution' means the Constitution of the University of Malaya ('Constitution of UM') contained in the Schedule to the 1961 Act, as amended from time to time. The present Constitution of UM ('the Constitution') is as found in PU (A) 107 of 1997 which came into force on 1 March 1997 as amended by PU (A) 356 of 1997, PU (A) 466 of 1997 (as from 1 March 1997) and PU (A) 511 of 1999 (as from 21 November 1997).

- C** The relevant sections of the Constitution for our purposes are those relating to the appointment and dismissal of 'employees of the university' defined under s 2 of the 1971 Act as any person employed by the university
- D** '... and including an officer, teacher and staff of the university'. A 'teacher' is defined in s 2 of the 1971 Act as a person appointed to be a teacher in accordance with the Constitution, including 'a senior professor, professor, reader, associate professor, senior lecturer, lecturer, assistant lecturer, language and matriculation teacher, and tutor'. The word 'officer' is defined in s 2 of the 1971 Act to include 'the chancellor, pro chancellor, vice chancellor, deputy vice chancellor, dean and deputy of a faculty, ... and any holder of any office created by this Constitution or statute'.

E Under s 6(1) of the Constitution, subject to the provisions of the Constitution, the university shall have the following powers:

- F** (a) ...
- (g) to institute Chairs, professorships, lectureships, and other posts and offices, and to make appointments thereto;
- (p) to appoint and promote employees of the University;
- ...
- G** (r) to regulate the conditions of service of the employees of the University, including schemes of service, salary scales, leave and discipline;
- (m) to do all such acts and things, whether or not incidental to the powers aforesaid as may be requisite in order to further improve the instruction, research, finance, administration, welfare of any discipline, in the University.

- H** Under s 15(1) of the Constitution, the 'authorities of the university shall be the board, the senate, the faculties, the centres, the academies, the institutions, the studies committee, the selection committee, the student welfare committee and such other bodies as may be prescribed by statute as authorities of the university'. Under s 23, for the purposes of appointment to a chair (which under s 2 means the post of professor as holder of a chair) and appointment and promotion to the posts of senior professors and professors a selection committee comprising certain specified members is provided for.
- I**

Under s 48(1)(d) of the Constitution, all persons employed or who are to be employed for a year or less shall be appointed by an officer authorized by the 'university management' (defined under s 48(4) of the Constitution, and which includes the vice chancellor, all the deputy vice chancellors, the general administrative manager, the financial controller and the chief librarian). In 1998, the applicant's contract was renewed for one year and this was obviously done under s 48(1)(d) of the Constitution.

It is further provided under s 48(2) of the Constitution that every person employed by the university shall hold office on such terms and conditions as may be specified by the board or as may be so prescribed by statutes and rules, and the terms and conditions so specified shall include a provision (apart from matters relating to teaching, examining, invigilating and other similar duties) that the employment is subject to the provisions of the Constitution and to the provisions of all statutes, Acts and Regulations in force on the date of the commencement of his employment.

It has to be pointed out that when the applicant received his letter of office from the university, this was before the coming into force of PU (A) 107 of 1997. At that time the letter was sent, teachers were appointed by the council of the university on the advice of the board of selection committee under PU (A) 104 of 1972.

It will be seen that this is not a straightforward case of master and servant between UM and the applicant. There is the element of public employment which is supported by statute, and if this was a case of dismissal by UM, a public body of its employee, the applicant, then 'there may be procedural requirements to be observed and failure to observe them may result in a dismissal being declared void' (see the House of Lords' case of *Malloch v Aberdeen Corp* [1971] 2 All ER 1278 at p 1294; see also the Federal Court case of *Fadzil bin Mohamed Noor v Universiti Teknologi Malaysia* [1981] 2 MLJ 196). As I have observed earlier, this is not a case of dismissal from service. The applicant's status was that of an employee whose contract of service had come to an end and which was not renewed. On the other hand, there is the principle that while a public body which had lawfully entered into a contract is bound by it and has the same power under it as any other contracting party, however, in exercising the contractual power, it might also be restricted by its public law responsibilities. Thus, a decision taken by a public body cannot be treated as purely in the realm of contract, it might, at the same time, be a decision governed by statute: *Webster v Auckland Harbour Board* (1983) 142 CR 646. This principle will have to be viewed in the context with what the applicant claims was a legitimate expectation to be heard before UM made its decision not to renew his contract and a legitimate expectation to continue in service.

Legitimate expectations

The applicant's argument is that by being an employee of a statutory body, he was afforded a special status under the statutory regime and because of the representations made to him by Professor Osman on behalf of the university that his status as a contract professor was an administrative

A requirement and that it would be a formality before he became confirmed as a permanent member of the university's academic staff, he was in possession of the legitimate expectation to be heard before the university decided not to renew his contract and also to continue in service till he retired.

B There are now two dimensions to the concept of legitimate expectation, ie procedural legitimate expectation and substantive legitimate expectation. In this case, we will be more concerned whether there are substantive legitimate expectation aspects generated by the facts of the case.

C The term 'legitimate expectation' was first used by Lord Denning in *Schmidt & Anor v Secretary of State for Home Affairs* [1969] 2 Ch 149, and this case has been referred to by our Supreme Court in *JP Berthelsen v Director General of Immigration, Malaysia & Ors* [1987] 1 MLJ 134. Abdoolcader SCJ, speaking for the court, had this to say about the concept and the role played by the possession of a legitimate expectation (that of a procedural dimension):

D The Court of Appeal in England held in *Schmidt & Anor v Secretary of State for Home Affairs* that no duty existed to give an alien an opportunity of being heard before a decision was made refusing an application for an extension of permission to remain in the United Kingdom. Lord Denning MR emphasized that the alien had 'no right' and 'no legitimate expectation' of being allowed to stay. However, he also said that the alien had not been treated unfairly since he has had an opportunity of making representations. Lord Denning describes (at p 170) an administrative body as being bound, in proper cases, to give a person affected by its decision an opportunity of making representations if, although lacking any right or interest, that person yet possesses 'some legitimate expectation, of which it would not be fair to deprive him without hearing what he has to say.' By way of illustration he contrasts the case of an alien whose residence permit has expired with that of another whose permit has expired with that of another whose permit is revoked before its expiry date; the latter possesses a legitimate expectation of being allowed to stay for the full term of the permit, and he alone has, in consequence, a legal right, in accordance with the principles of natural justice, to insist that his representations be considered before the making of any decision upon his deportation.

G It will be noted that Abdoolcader SCJ then cited and went on to discuss in his judgment the concept of legitimate expectation in the context of *McInnes v Onslow-Fane & Anor* [1978] 1 WLR 1520 and *Attorney General of Hong Kong v Ng Yuen Shiu* [1983] 2 AC 629. What was discussed was the concept of legitimate expectation of a procedural nature.

H As has been pointed out by Michael Supperstone QC and James Goudie QC in their book *Judicial Review* (2nd Ed) at 8.25, the concept of legitimate expectation has been widely adopted both in English courts and Commonwealth jurisdictions, and that the House of Lords has recognized both in *O'Reilly & Ors v Mackman & Ors* [1983] 2 AC 237, and in *Re Findlay* [1985] AC 318, that legitimate expectation would provide an applicant with locus standi in judicial review proceedings.

I In respect of legitimate expectation of a substantive nature in England, there was disagreement whether there was a doctrine of substantive

legitimate expectation. Laws J in *Reg v Secretary of State for Transport; ex p Richmond upon Thames London Borough Council* [1994] 1 WLR 74 rejected that there was such a doctrine, while in *R v Ministry of Agriculture, Fisheries and Food; ex p Hamble (Offshore) Fisheries Ltd* [1995] 2 All ER 714, Sedley J was of the view that there was such a doctrine and there were precedents for such a doctrine (see PP Craig: *Substantive Legitimate Expectations in Domestic and Community Law* [1996] Cambridge Law Journal 289 for a discussion of the two decisions; see also Michael Supperstone and James Goudie: *Judicial Review* (2nd Ed) 5.31, 5.32 and 8.30). The Court of Appeal in *R v Secretary of State for the Home Department; ex p Hargreaves* [1997] 1 WLR 906 expressed that Sedley J's view was heresy. It decided the matter before it on *Wednesbury [Associated Provincial Picture Houses Ltd v Wednesbury Corp]* [1948] 1 KB 223 grounds.

In a recent case, *R v North and East Devon HA; ex p Coughlan* [2000] 2 WLR 622, the Court of Appeal observed that the view expressed in *ex p Hargreaves* on substantive legitimate expectation was obiter and distinguished the case on other grounds.

The Federal Court case is a planning case with exceptional circumstances, *Majlis Perbandaran Pulau Pinang v Syarikat Bekerjasama-sama Serbaguna Sungai Gelugor dengan Tanggungan* [1999] 3 MLJ 1, establishes in Malaysia that the concept of legitimate expectation could (in appropriate cases) have an impact not merely on procedures but also on the substance of the decision.

In *Council of Civil Service Unions v Minister for Civil Service* [1985] AC 374, Lord Diplock considered the concept when seeking to define the ambit of judicial review and stated at p 408 that for a legitimate expectation to arise, the decision must affect the other person by depriving him of some benefit or advantage which either:

- (i) he had in the past been permitted by the decision maker to enjoy and which he can legitimately expect to be permitted to continue to do until there has been communicated to him some rational grounds for withdrawing it on which he has been given an opportunity to comment; or
- (ii) he has received assurance from the decision maker that will not be withdrawn without giving him first an opportunity of advancing reasons for contending that they should not be withdrawn.

It will not be out of place to refer to the judgment delivered by Lord Woolfin in *Ex p Coughlan* at pp 652–653 which refers to the above:

77 ... In this country *Reg v Secretary of State for the Home Department; ex p Ruddock* [1987] 1 WLR 1482 and *Reg v Secretary of State for the Home Department; ex p Asif Mahmood Khan* [1984] 1 WLR 1337 were cited as instances of substantive legitimate expectations to which the courts were if appropriate prepared to give effect. Reliance was also placed, as we would place it, on Lord Diplock's carefully worded summary in *Council of Civil Service Unions v Minister for the Civil Service* [1985] AC 374, at pp 408–409 of the contemporary heads of judicial review. They included benefits or advantages which the applicant can legitimately expect to be

- A permitted to continue to enjoy. Not only did Lord Diplock not limit these to procedural benefits or advantages; he referred expressly to in *Re Findlay* [1985] AC 318 (a decision in which he had participated) as an example of a case concerning a claim to a legitimate expectation — plainly a substantive one, albeit that the claim failed. One can readily see why: Lord Scarman's speech in *In re Findlay* is predicated on the assumption that the courts will protect a substantive legitimate/
- B expectation if one is established; and Taylor J, so interpreted it in *Ex p Ruddock & Ors* [1987] 1 WLR 1482. None of these cases suggests that the standard of review is always limited to bare rationality, though none developed it as the revenue cases have done'.

C In *Ex p Coughlan*, the applicant had been grievously injured in a road traffic accident. The applicant and seven comparably disabled patients were moved with their agreement from a hospital, which it was desired to close, to a purpose built facility, Mardon House. The health authority decided to close Mardon House and to transfer long term general nursing care to 'the local authority although no alternative placement for the applicant was identified.

- D The Court of Appeal held (see para 2 at p 623) that if a public body exercising a statutory function made a promise as to how it would behave in the future which induced a legitimate expectation of a benefit which was substantive, rather than merely procedural, to frustrate that expectation could be so unfair that it would amount to an abuse of power; that, in such circumstances, the court had to determine whether there was a sufficient
- E overriding interest to justify a departure from what had previously been promised; that in view of the importance of the promise to the applicant in the case, the fact that it was limited to a few individuals and that the consequences to the health authority of honouring it were likely to be financial only, the applicant has a legitimate expectation that the health
- F authority would not renege from its promise unless there was an overreaching justification for doing so; and that, in the circumstances, including the fact that the quality of the alternative accommodation to be offered to the applicant was not known, the closure decision was an unjustified breach of that promise which constituted unfairness amounting to an abuse of power.

G Lord Woolf MR at p 644 in discussing the role of the court in regard to the concept of substantive legitimate expectation in respect of a High Court judgment which was on appeal observed:

Legitimate expectation — the court's role

- H 55 In considering the correctness of this part of the judge's decision it is; necessary to begin by examining the court's role where what is in issue is a promise as to how it would behave in the future made by a public body when exercising a statutory function. In the past it would have been argued that the promise was to be ignored since it could not have any effect on how the public body exercised its judgment in what it thought was the public interest. Today such an argument would have no prospect of success ...
- I 56 What is still the subject of some controversy is the court's role when a member of the public, as a result of a promise or other conduct, has a legitimate expectation that he will be treated in one way and the public

body wishes to treat him or her in a different way. Here the starting point has to be to ask what in the circumstances the member of the public could legitimately expect. In the words of Lord Scarman in *Re Findlay* [1985] AC 318 at p 338, 'But what was their legitimate expectation?' Where there is a dispute as to this, the dispute has to be determined by the court, as happened in *Re Findlay*. This can involve a detailed examination of the precise terms of the promise or representation made, the circumstances in which the promise was made and the nature of the statutory or other discretion.

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Lord Woolf then discussed the three possible outcomes from the examination at p 645:

- (a) the court may decide that the public authority is only required to bear in mind its previous policy or other representation, giving it the weight it thinks right, but no more, before deciding whether to change course. Here, the court is confined to reviewing the decision on *Wednesbury* grounds (*Associated Provincial Picture Houses Ltd v Wednesbury Corp* [1948] 1 KB 223);
- (b) on the other hand, the court may decide that the promise or practice induces a legitimate expectation of, for example, being consulted before a particular decision is taken. Here it is uncontentious that the court itself will require the opportunity for consultation to be given unless there is an overriding reason to resile from it (see *Attorney General of Hong Kong v Ng Yuen Shiu* [1983] 2 AC 629) in which case the court will itself judge the adequacy of the reason advanced for the change of policy, taking into account what fairness requires;
- (c) where the court considers that a lawful promise or practice has induced a legitimate expectation of a benefit which is substantive, not simply procedural, where authority now establishes that here too the court will, in a proper case, decide whether to frustrate the expectation, is so unfair that to take anew a different course will amount to an abuse of power. Here, once the legitimacy of the expectation is established, the court will have the task of weighing the requirements of fairness against any overriding interest relied upon for the change of policy.

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It will be noted that the third category is the most appropriate remedy to be considered in the context of our case.

Lord Woolf in *Ex p Coughlan* having observed that the court having decided that the third category is appropriate that it has, when necessary, to determine whether there is a sufficient overriding interest to justify a departure from what has been previously promised, continued at p 646:

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Nevertheless, most cases of an enforceable expectation of a substantive benefit (the third category) are likely in the nature of things to be cases where the expectation is confined to one person or a few people, giving the promise or representation the character of a contract.

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The Court of Appeal examined several authorities on the matter and at p 654, Lord Woolf stated:

- A 82 The fact that the court will only give effect to a legitimate expectation within the statutory context in which it has arisen should avoid jeopardizing the important principle that the executive's policy-making powers should not be trammelled by the courts: see *Hughes v Department of Health and Social Security* [1985] AC 776 at p 788, per Lord Diplock. Policy being (within the law) for the public authority alone, both it and the reasons for adopting or changing it will be accepted by the courts as part of the factual date — in other words, as not ordinarily open to judicial review. The court's task — and this not always understood — is then limited to asking whether the application of the policy to an individual who has been led to expect something different is a just exercise of power. In many cases the authority will already have considered this and made appropriate exceptions (as was envisaged in *British Oxygen Co Ltd v Board of Trade* [1971] AC 610 and as had happened in *Ex parte Hamble (Offshore) Fisheries Ltd* [1995] 2 All ER 714), or resolved to pay compensation where money alone will suffice. But where no such accommodation is made, it is for the court to say whether the consequent frustration of the individual's expectation is so unfair as to be a misuse of the authority's power.
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Was there substantive legitimate expectation?

- The university contends that there was no legitimate expectation on the part of the applicant and that the burden is on him to prove it. The applicant averred that in 1996 he was Senior Research Fellow and Associate Professor at the Centre for Policy Research, USM and was confirmed as a permanent member of the university. During 1996, the Deputy Vice Chancellor (Academic Affairs) of UM, Professor Dato' Dr Osman Bakar ('Professor Osman'), approached him to join UM. He had a few meetings with Professor Osman, with the first one held sometime in March 1996 during a conference at PJ Hilton. Professor Osman informed him at this first meeting that UM was proposing to establish a Centre for Civilizational Dialogue, and that the university had the applicant in mind to be appointed as its first director and head. Professor Osman told him he had been headhunted for the position because of his international standing in the academic community and that this would add credibility to the image of the centre and the university.
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- G The applicant stated that his initial response to Professor Osman was to inform him that he was very content with his position at USM and his involvement with JUST World Trust, and that his family and he had been residing in Penang since 1970 and they were very comfortable there and he was most reluctant to be relocated. He also told him that one of his daughters was then studying in Penang and he had purchased a house in Penang which he was occupying. According to him, however, Professor Osman told him to seriously think about the offer and that he should not reject it out of hand.
- H

- I The applicant referred to the second meeting which took place on 1 July 1996 at the Rumah Universiti Malaya when Professor Osman brought up the subject again. At this meeting, Professor Osman informed him that UM was willing to appoint him as professor and to increase his compensation package he was receiving from USM. His response was that he had not given much thought to UM's offer.

Then, according to the applicant, during a seminar in Penang on 11 and 13 October 1996 on 'Alternative politics in Asia' organized by JUST World, Professor Osman, who was one of the participants of the seminar, again brought up the subject with him and informed him that UM was very serious about its plan to set up the centre and would very much like him to head it and that he should give an answer as soon as it was convenient. At this third meeting, the applicant informed Professor Osman that he had seriously considered his offer and was prepared to accept it but needed a little more time to make the final decision.

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The applicant stated that among the factors that were disclosed to him by Professor Osman during their meetings that influenced his decision to leave Penang after 26 years was the potential to establish the Centre for Civilizational Dialogue (the first of its kind in the world) which would pose an exciting intellectual challenge in a field that was dear to his heart.

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More importantly were the representations which the applicant stated Professor Osman had made to him which induced him to leave USM in Penang to join UM in Kuala Lumpur. In his own words (translated from Bahasa Malaysia):

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It was always the understanding between Professor Osman (and thus UM) and I that this was going to be a long term arrangement and, that God willing and health permitting, I would head the Centre until my retirement when I attained the age of 55 years (which would be in the year 2002). Professor Osman however informed me that UM's internal set up was such that I would have to begin as a contract professor serving on a year to year basis. Professor Osman however assured me that this was just an administrative requirement of UM and that it would only be a formality before I get to be confirmed as a permanent member of the academic staff of UM. I specifically informed Professor Osman at our meetings that I had already been confirmed as a permanent staff member of the USM, Penang and therefore would not be prepared to leave a safe tenured position for any temporary or short term arrangement.

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Relying upon the assurances of Professor Osman, the applicant agreed to leave USM and to move to UM. He averred, 'If not for these assurances, I would not have been considered the offer of UM, conveyed to me through Professor Osman, let alone accept it.

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Professor Osman in his capacity as Deputy Vice Chancellor (Academic) on 11 December 1996 wrote a letter indicating that the Vice Chancellor had agreed to appoint him as a 'contract professor' for a term of 1 year commencing on 1 March 1997 and intimated to him that if he was interested to serve for a longer term at the centre, the Vice Chancellor would consider an extension of the contract. The letter (translated from Bahasa Malaysia) reads:

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11 December 1996
Dr Chandra Muzaffar
58, Jalan Mayang Pasir
Bayan Baru
11950 Penang

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- A** Sir,
Appointment as Contract Professor at the Centre for Civilizational Dialogue
We are pleased to inform you that the Dato' Vice Chancellor has agreed to officially establish the Centre for Civilizational Dialogue at the University of Malaya. He has also basically agreed to appoint you as a contract professor at the Centre for a term of one year commencing 1 March 1997.
- B** If you are interested to serve a longer term at this Centre, the Vice Chancellor will consider an extension of your contract. A detailed offer letter with the list of duties planned for you will follow shortly.
- C** Thank you for your interest in serving with the University of Malaya. Your experience in the field of study relating to civilization and international affairs will be a great contribution to the efforts of the University of Malaya to expand the field.
Thank you.
Yours truly
PROFESSOR DATO' OSMAN BAKAR
- D** Deputy Vice Chancellor (Academic)
sk Dato' Dr Hj Abdullah Sanusi Ahmad
Vice Chancellor
En Yaacob Hussin
Registrar
- E** The applicant informed Professor Osman that he was prepared to accept the position as director of the centre, and he therefore tendered his resignation from USM and took steps to relocate to Petaling Jaya, including the selling of his house in Penang, joining UM on 1 March 1997 as the Founding Director and Professor of Civilizational Dialogue.
- F** In regard to UM's offer to the applicant to join UM as a professor, there were affidavits filed by Professor Osman and also by the Registrar of UM offering the argument that according to the Constitution of UM and the rules, regulations and statutes made thereunder, the 'board of directors' has the authority to appoint a professor upon due consideration of the recommendation of the selection committee and that the vice chancellor is empowered to appoint professors on a contract basis for one year, and that
- G** the vice chancellor had offered the applicant the post of professor for one year. The applicant does not dispute the legal and administrative aspects relating to the appointment of professors.
- H** Professor Osman also stated in para 4(f) of his affidavit (encl 27) that at his level, he never made any offer of appointment to the applicant because he was not empowered to do so and that (see para (g)) he never represented to the applicant at any time 'that the applicant would be confirmed as a permanent employee of the respondent if he were to take up the second option' (ie of joining UM). He continued:
- I** I reiterate that I informed the applicant that the appointment of the applicant as a full professor at the centre could only be made by the vice chancellor of the respondent on a contractual basis for a period of one year initially, and thereafter, any extension of the applicant's contract could be considered by the vice chancellor of the respondent.

But earlier, in his affidavit (see para 4(e)), Professor Osman when, talking about the second option which was offered to the applicant, mentioned about a longer tenure after consideration by a selection committee:

- (e) as a second option, the applicant could resign from his position as an Associate Professor with USM. I could then propose to the vice chancellor of the respondent to appoint the applicant as a full professor at the centre on a contractual basis for an initial period of one year before consideration by the selection committee for a contract of longer tenure.

In para 5 of his affidavit in reply (encl 32), the applicant stated that Professor Osman informed him that he had discussed the matter further with the vice chancellor of UM who, according to Professor Osman, 'apparently had the discretion to appoint me professor for a period of one year, but any appointment for a longer period would have to be made by a Selection Committee of the university.' He continued, 'It was against this background that Professor Osman informed me of the option referred to in para 4(e) of his affidavit'.

The applicant then stated in para 6 of his affidavit:

- 6 Paragraphs 4(f) and (g) are denied. Shortly after I had taken my appointment and reported for duty, I was requested to submit a list of foreign experts whom the University of Malaya was going to write to seek their opinion on whether I should be appointed professor by the selection committee. I supplied such a list. To the best of my knowledge the University of Malaya wrote to some of the foreign experts named in my list. I have reason to believe that the experts who were invited to comment on my qualifications and suitability gave favourable opinions ... The fact that the university took all the necessary administrative steps to formalize my appointment on a permanent basis by the selection committee is consistent with the facts I have set out in my affidavit.

There has been no denial that the university wrote to the foreign experts in the applicant's list for comments, only that 'these matters were not intended to formalize the appointment of the applicant on a permanent basis' (see further affidavit of Professor Osman, encl 36, para 4).

In assessing the affidavit evidence available before this court, I have been guided by the principles relating to the evaluation of such evidence as enunciated in *Eng Mee Yong & Ors v V Letchumanan* [1979] 2 MLJ 212 at p 217; *Tay Bok Choon v Tahansan Sdn Bhd* [1987] 1 MLJ 433 at p 436; *Lori Malaysia v Arab Malaysia Finance Bhd* [1999] 3 AMR 3161 at pp 3180–3181 and *R Rama Chandran v the Industrial Court of Malaysia & Anor* [1997] 1 MLJ 145 at pp 29–30.

I have no hesitation in accepting the very plausible version of the applicant that it was represented to him by Professor Osman that he would head the centre until he retired, although he would be appointed as a contract professor serving on a year to year basis (by the vice chancellor) with the assurance from Professor Osman from UM that this was just an administrative requirement of UM and that it would only be a formality before he got to be confirmed as a permanent member of the academic staff of UM by another body of the university. Whatever the denials on legal

- A** pleas, ie that neither Professor Osman nor the vice chancellor could appoint him on a permanent basis, the reality is that the representations were that the applicant would have his term extended until made a permanent staff, and these representations were those that could legitimately be made. In fact, they are by no means extraordinary representations when someone of international stature in the academic world like the applicant is head hunted to start up and head a department which is entirely new in concept and which would bring prestige to the university. The probabilities favour that there were such representations. I find it difficult to believe that a man happily ensconced in Penang with his family with a house of his own and deeply rooted there for over 25 years and with a permanent job with another university, albeit as associate professor, would completely uproot himself and the family, sell his house and disturb the schooling of one of his children for a mere one year's term as professor with no prospect of continuing until being made a permanent staff. It does not make sense for anyone to have acted the way he did but for the representations. There is no denial by the university that the applicant gave a list of foreign experts to whom the university could write. There was, however, a weak denial that this was not intended to formalize the appointment of the applicant on a permanent basis, but there was no explanation as to why the list was required in the first place. This adds strength to the applicant's assertion that there were such representations that he would be made permanent, and that his employment on a year to year contract was an administrative measure.
- E** Indeed his original contract was renewed for another year and he was asked to apply and he applied for and was given staff quarters in his second year.

- Admittedly, the applicant has no enforceable right of being made a permanent staff of UM since there is no power of the vice chancellor to do that on behalf of the university, but such power is vested in another university authority and it appears that such authority had not exercised its power to appoint or not to appoint the applicant before his contract was not renewed. But at the very least, the applicant had a legitimate expectation of continuing to be employed as a contract professor by the vice chancellor on behalf of the university from year to year until he was confirmed as a permanent staff member. The vice chancellor, on behalf of the university, has a discretionary power on such appointments (and for the renewal of contracts for one year at a time). After the representations had been made to him, then the applicant had a right to expect that UM would act in accordance with that representations of at least renewing his contract on a year to year basis until he became confirmed as a permanent staff member. While there is a concomitant legitimate expectation to be heard as to why the contract could not be renewed on a year to year basis, until he was so confirmed, the benefit of being confirmed for another year by the vice chancellor who has such power should be given unless there is an overreaching public interest against frustrating the legitimate expectation of the applicant.
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- I** On 18 February 1999, the applicant received a letter from the Registrar of the University that his contract would terminate on 28 February 1999, and that his contract of service would not be renewed and that the position of professor at the centre would not be filled with contract officers. The

letter stated the reason for the non-renewal was based, amongst other things, on the economic factors that UM was experiencing and on the directive from the Government that the university should optimize its existing internal resources. The affidavits of the registrar (encll 23 and 28) repeat the reasons for the non-renewal, namely that the university had experienced a reduction in the allocation of funds to facilitate the management and development of the university for the years 1998 and 1999, and that the university had received a directive from the Ministry of Education to take measures to improve the nation's economy. There was evidence that the university had not renewed the contract of several professors and lecturers, but the evidence also showed that the university had renewed the contract of some of the lecturers. More importantly in our case is that the applicant, and there is no evidence to the contrary, was only the one who was given the representations that he would continued with employment as stated earlier, and as was pointed out by Lord Woolf in *Ex p Coughlan* 'most cases of an enforceable expectation of a substantive benefit ... are likely, in the nature of things, to be cases where the expectation is confined to one person or a few people, giving the promise or representation the character of a contract' (see p 646A).

Before I comment further on the reasons advanced by the university, let me deal with the contention of the applicant that the non-renewal of the contract was for a collateral reason which was political in nature. I have gone through the affidavits and it appears that reason cannot stand as it is based on a surmise and no evidence has been offered by him to justify the court making such an inference that his contract was terminated for a political reason.

My approach to the reasons advanced for the non-renewal of the contract is principally that expounded by *Ex p Coughlan* — that the court has to see that there is a proper balance between the public interest and private interest in the light of the representations made to the applicant on which he acted to his grave detriment, and the public interest arising from a directive from the Ministry of Education directing the university to optimize its internal resources and also the financial constraints on the resources of the university.

In regard to the public interest aspect, the reliance by the university on economic factors which it gave was vague and unhelpful and the reference to the government directive which in reality gave its discretion on the non-renewal of contract officers (and the university in fact renewed the term of some lecturers) do not show that there was an overriding public interest for the university to renege on its representations to the applicant and to him alone that the vice chancellor will continue to employ him on a year to year basis until he was placed on the permanent staff by the relevant university authority.

I am, however, mindful of the statutory ramifications relating to the structured approach for various authorities to make various appointments on behalf of the university within UM; that only the vice chancellor has only the power to appoint (and therefore renew) the contract of a professor for one year at a time. The applicant served two years in the university from 1 March 1997 to 28 February 1999. There is no evidence of the applicant's

- A** case having been considered by the relevant authority for permanent placement under the law. The retirement age for a permanent staff in UM is 55 years and the applicant had only three years left before reaching the age of 55. It is difficult for the court to gauge when the relevant authority which has the statutory authority to place him on a permanent basis would meet or what its decision would be, but in all fairness in view of the
- B** legitimate expectation of the applicant, he should have continued to be in employment for another year at the least as that was within the power of the vice chancellor on behalf of the university to give him until his appointment as permanent professor was confirmed or rejected by the relevant authority of the university.

C *Consequential relief*

- I now have to address the question of what relief should be given to the applicant. In the leave application which was granted by my learned brother Azmel J, there was a prayer for reinstatement. There was also an alternative prayer for 'the appropriate order' under para 1 of the Sch to the Court of
- D** Judicature Act 1964 ('the CJA') and s 25 thereof.

That the applicant cannot be reinstated will be apparent from the later part of my decision. That the applicant may obtain an 'appropriate' relief is to my mind beyond question (see *Tan Tek Seng v Suruhanjaya Perkhidmatan Pendidikan & Anor* [1996] 1 MLJ 261).

- E** The applicant is pursuing monetary compensation for three years from 1 March 1999 to the date of his retirement in 2002 and predicates the relief sought on principles enunciated in the majority decision of the Federal Court in *R Rama Chandran v The Industrial Court of Malaysia & Anor* [1997] 1 MLJ 145 that the jurisdiction of Malaysian Courts to grant any of
- F** the prerogative orders flow not only from the prerogative jurisdiction inherited from the United Kingdom courts but also from the provisions of para 1 of the Sch and the CJA and s 25 thereof, and that neither the proviso to s 25(2) nor O 53 (before its amendment in 2000) of the Rules of the High Court 1980 can constitute an impediment to the court's reliance on para 1 of the Schedule to the CJA. By a majority, the Federal Court held that in
- G** appropriate cases, the High Court has the power not merely to quash the award of the Industrial Court, but to proceed to find that an employee has been dismissed from service without just cause or excuse, and when necessary, to award fair compensation. Edgar Joseph Jr FCJ had this to say at p 197:

- H** Having regard to the breadth of the provisions of para 1 of the Schedule to the Courts of Judicature Act 1964, it would be wrong to assume that the extent of the power of the courts in Malaysian in the field of Public Law remedies is limited in the same manner as that of the courts in the United Kingdom, where there are no such equivalent provisions. ... The need for such a wider power is illustrated by the case of *Chief Constable of the North Wales Police v Evans* [1982] 1 WLR 1155 where the House of Lords was struggling to mould
- I** the remedy to suit the justice of the case. In the event, the House granted a declaration to protect the probationary constable financially for the Chief Constable's breach of the rules of natural justice.

Needless to say, if, as appears to be the case, this wider power is enjoyed by our courts, the decision whether to exercise it, and if so, in what manner, are matters which call for the utmost care and circumspection, strict regard being had to the subject matter, the nature of the impugned decision and other relevant discretionary factors. A flexible test whose content will be governed by all the circumstances of the particular case will have to be applied.

In any event, the procedure in O 53 was amended when the whole of O 53 was substituted by the Rules of the High Court (Amendment) 2000 (PU (A) 342/2000) on 21 September 2000. Presently, O 53 r 2(3) provides that upon 'the hearing of an application for judicial review, the court shall not be confined to the relief claimed by the applicant, but may dismiss the application or make any orders, including an order of injunction or monetary compensation ...'

An affidavit (encl 38) filed on 30 August 2000 on behalf of the applicant shows that the applicant was earning the sum of RM9600 on a monthly basis made up of a basic salary of RM5470 and allowance for 'entertainment' (RM2150) and 'housing' (RM1300) and for being in 'special grade' (RM500). The applicant also claims the monthly contribution to the Provident Fund (EPF) by the university. An affidavit (encl 38A) filed on 30 September 2000 on behalf of the university does not dispute the amounts paid on a monthly basis but disputes that he is entitled to them after his contract was not renewed.

I am mindful that this is not a case of unfair dismissal. The applicant expected to be a member of the permanent staff, but as explained earlier, that expectation cannot be fulfilled because the power to emplace him on a permanent basis has not been exercised by the relevant authority. That legitimate expectation cannot be fulfilled and cannot be enforced. So it cannot form the basis for a monetary claim till the date he retires. It was a year to year contract which was renewable by the university through the vice chancellor, and in fact his term had been renewed earlier by the vice chancellor, and what subsequently took place was that he had been denied the legitimate expectation of being continued in service for another year as was explained earlier. It would be fair and just to compensate him for that one year which he had expected and what was not given to him. I would award him compensation of RM115,000 for one year (ie RM9600 x 12 months), the University's monthly contribution to EPF for 12 months and interest of 8% on the sum of RM115,000 from 1 March 1999 to date of payment.

In the result, certiorari to issue to quash the decision of UM not to renew the contract of the applicant. Compensation of RM115,000 for one year and interest at 8% on the said sum from 1 March 1999 to date of payment. The university is to pay the costs of the application.

Order accordingly.

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